

## **REMARKS**

### **Status of the Claims**

Claims 1-21 are pending in this application.

Claims 1-21 are rejected.

Claims 4, 11 and 18 have been canceled, without prejudice.

Claims 1 and 16 have been amended. Support for these amendments can be found throughout the specification, claims, and drawings, as originally filed.

### **Declaration of Prior Invention to Overcome Cited Patent Under 37 CFR 1.131**

Applicant respectfully submits that Ishii et al. U.S. Patent 6,751,542 is an improperly cited reference against Applicant's invention. Ishii et al. has a U.S. filing date of March 28, 2003. To demonstrate that Ishii et al. is an improperly cited reference, Applicant submits two affidavits to overcome Ishii et al. which illustrate facts showing a completion of the invention in this country before the filing date of Ishii et al. which established reduction to practice prior to the effective date of Ishii et al. (specifically on or after November 4, 2002) and which demonstrate diligent pursuit of the invention until a subsequent filing of a provisional application on April 11, 2003 and a further filing of a non-provisional application claiming the benefit of the provisional application filed on February 27, 2004.

Accordingly, Applicant respectfully submits that Ishii et al. no longer proper as a reference to be cited against Applicant's application.

Establishing a prima facie case of obviousness requires the proposed combination of references teach or render obvious all the elements of the rejected claims. All of the 35 USC §103 rejections of Applicant's claims rely partially upon the reference Ishii et al. Accordingly, with the removal of Ishii et al. none of the 35 USC §103 rejections of Applicant's invention are continually effective and as such, all such rejections are respectfully traversed.

**Rejection of Claims 1-4, 6-15 Under 35 USC §103 (a)**

Claims 1-4, 6-15 are rejected under 35 USC §103(a) as being unpatentable over Kurihara U.S. Patent 6,449,547 in view of Ishii et al. U.S. Patent 6,751,542 and further in view of Yutkowitz U.S. Patent 6,865,499. As previously stated, Applicant respectfully submits that Ishii et al. is an improperly cited reference against Applicant's invention due to the facts revealed in Applicant's 37 CFR 1.131 Declaration. However, even if Ishii et al. were properly cited the proposed combination would fail to teach or make obvious Applicant's invention. On page 2 of the above noted Office Action, the Examiner has stated in regards to claim 1, "As to claim 1, Kurihara/547 shows method of calibrating an electrohydraulic control system that provides an output response in response to an input current". Applicant respectfully submits that this characterization of Kurihara/547 is not accurate. Kurihara/547 is best shown in Figure 4 provides an accelerator pedal which has an angle sensor which is noted as item 2. Based upon the angle of a pedal, an electrical signal is provided to an electrically operated throttle valve noted as item 7. The signal from the accelerator pedal provides an angle reading which is further interpreted based upon the vehicle speed which determines a required horse power value which is noted in the box 13. The required horse power value is then utilized to control an electrically operated throttle valve noted as item 7. The coefficients which

are utilized to generate the graphs shown in Figure 2 and Figure 3 are based upon the electrically operated throttle valve 7 being in a full (open) throttle position as a constant. The values of output are determined by horse power demand and vehicle speed. The coefficients determined are for control of a variable displacement engine and not a hydraulic valve as in Applicant's invention. Accordingly Kurihara/547 does not disclose a method of calibrating an electro-hydraulic control system. angle of pedal displacement.

The proposed combination by the Examiner takes a control system for an internal combustion engine and tries to utilize such teaching to provide a control system for an electro-hydraulic system of Ishii et al. The teaching of such a proposed combination is in conflict with the purpose of its members.

Recent case law specifies that in order for a proposed combination of references to render the claims of an application obvious, the proposed references must be in the same field of endeavor as applicant's invention. KSR International CEOV Teleflex, Inc. et al., 2007 WL 1237837, 17 (US 2007), 82 USPQ second 1385. Specifically, in that case, the court states, "The proper question to have asked is whether a pedal designer of ordinary skill, facing a wide range of needs created by developments in the field of endeavor, would have seen a benefit to upgrading the [pedal of] Asano with a sensor of [Smith]." ID [emphasis added]. There is nothing in either Kurihara et al. or Ishii et al. that would lead on skilled in the art to combine the teachings of control of an electrically operated throttle valve with that of control of a solenoid utilized with an electro-hydraulic system.

### **Rejections of Claims 5, 16-21 Under 35 USC §103**

The rejections of all of the above noted claims are either totally or partially dependent upon the combination of Kurihara/547 and Ishii/542. For the reasons previously stated, in regards to the rejections of claims 1-4 and claims 6-15, Applicant respectfully submits that the rejection of the remaining claims are all dependent at least partially or totally upon the aforementioned Kurihara/547 or Ishii et al. and therefore such rejections remain improper for the reasons formerly stated. The previous argument is not repeated in the interest of brevity conservation of Examiner's valuable time.

## CONCLUSION

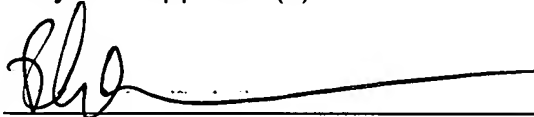
It is respectfully submitted that in view of the above amendments and remarks the claims 1-3, 5-10, 12-17 and 19-21, as presented, are patentably distinguishable because the cited patents, whether taken alone or in combination, do not teach, suggest or render obvious, the present invention. Therefore, Applicant submits that the pending claims are properly allowable, which allowance is respectfully requested.

The Examiner is invited to telephone the Applicant's undersigned attorney at (248) 364-4300 if any unresolved matters remain.

Respectfully submitted,

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